

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

**ORDER**

-against-

92 CR 91 (RJD)

DAVID ROBINSON,

Defendant.

-----X

DEARIE, Chief Judge.

Defendant David Robinson moves for a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2). For the reasons set forth below, the motion is denied.

Defendant was convicted after a jury trial of conducting the affairs of an enterprise through a pattern of racketeering activity, in violation of 18 U.S.C. 1962(c); conspiring to distribute and possess with intent to distribute fifty grams or more of cocaine base, in violation of 21 U.S.C. § 841(a)(1); and three counts of distributing and possessing with intent to distribute more than 50 grams of cocaine base, in violation of 21 U.S.C. 841(b)(1)(A).

At sentencing, defendant challenged the government's position, accepted by the Presentence Investigation Report "PSR," that he was responsible for the distribution of more than fifteen kilograms of cocaine base. The Court found defendant responsible for *at least* 1.5 kilograms, placing him within the top base offense level of 38. According to the United States Sentencing Guidelines ("guidelines") applicable at the time, defendant faced a range of 292 to 365 months of incarceration. Taking into consideration defendant's health, amongst other factors, the Court sentenced him to 232 months of concurrent incarceration on each count, a sixty-month downward departure from the bottom of the guideline range.

By letter dated April 9, 2008, defendant moved this court for a reduction in his sentence pursuant to 18 U.S.C. § 3582(c)(2), based on Amendment 706 to the guidelines, 72 Fed. Reg. 28571-72 (2007). After appointing counsel, the Court ordered the government to show cause why defendant's motion should not be granted. In its reply, dated May 9, 2008, the government contended that defendant was responsible for the distribution of more than 4.5 kilograms of cocaine base and thus ineligible for a sentence reduction under Amendment 706. In the alternative, the government encouraged the Court to exercise its discretion not to reduce defendant's sentence, citing his prison disciplinary record.

Defendant's projected release date is December 18, 2008. According to the government, defendant is currently scheduled to be released to a halfway house on June 24, 2008. Given his pending release, the substantial departure given at the time of sentencing, and defendant's prison disciplinary record, the Court denies defendant's motion.

SO ORDERED.

Dated: Brooklyn, New York  
May 25 2008

s/ Judge Raymond J. Dearie

---

RAYMOND J. DEARIE  
United States District Judge